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**U.S. Citizenship
and Immigration
Services**

DZ

FILE: LIN 03 031 53268 Office: NEBRASKA SERVICE CENTER

Date: APR 26 2004

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a travel services business that seeks to employ the beneficiary as an accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 8, 2002 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing income and balance sheet statements, consolidated statements and various other accounting statements and reports; preparing and keeping accounts payable and receivable, general ledgers, and payroll accounts; reviewing and verifying accuracy of journal entries and accounting classification assigned to various records; conducting special studies and developing or recommending accounting methods and procedures; preparing monthly, quarterly, and annual tax returns; analyzing financial reports and records; and coordinating accounting matters with other departments. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is an accounting clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of an accountant, and is not a bookkeeping clerk. According to counsel, the proposed duties are so complex that a baccalaureate degree in accounting is required. Counsel states further that the record includes copies of the petitioner's job advertisements that demonstrate that it normally requires a minimum of a bachelor's degree for its accountant position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. CIS does not agree with counsel's assertion that the beneficiary is a "corporate accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. In its *Handbook*, 2004-2005 edition, the DOL describes the job of a management accountant as follows:

Management accountants - also called cost, managerial, industrial, corporate, or private accountants - record and analyze the financial information of the companies for which they work. . . . Usually, management accountants are part of executive teams involved in strategic planning or new-product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The record reflects that the petitioner, which is a travel services business, employs 11 persons and has a gross annual income of \$2,243,119. The business in which the beneficiary is to be employed does not require the services of a corporate accountant who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant.

Rather, the level of responsibility of the proffered position falls within a bookkeeping, accounting, and auditing clerk. A review of the *Handbook* finds no evidence that a baccalaureate or higher degree in a specific specialty is

required for a bookkeeping, accounting, and auditing clerk. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner also has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as accounting, for the offered position. In its November 27, 2002 letter, the petitioner states that its current accountant holds a baccalaureate degree in accounting. Other than the petitioner's job advertisements, however, the record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for various accountant positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the positions is that of a staff accountant for an investment management firm and another position is that of an accountant for an investment advisory firm. The majority of the advertisements are in the finance industry. The petitioner's industry, however, is not in finance. Thus, the advertisements have little relevance.

It is also noted that the record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.